

15 FAM 340 LEASE AGREEMENTS

*(CT:OBO-1; 04-29-2005)
(Office of Origin: OBO)*

15 FAM 341 DRAFTING A LEASE

*(CT:OBO-1; 04-29-2005)
(Uniform State/USAID/Commerce/Agriculture/DIA)*

When drafting a lease, posts must use the model lease in 15 FAM Exhibit 341B and follow the instructions given in 15 FAM Exhibit 341A.

15 FAM 342 LEASE AMENDMENTS

*(CT:OBO-1; 04-29-2005)
(Uniform State/USAID/Commerce/Agriculture/DIA)*

Approvals for lease amendments are handled in the same manner as approvals for the original leases; 15 FAM Exhibit 342 provides a sample lease amendment.

15 FAM 343 RENEGOTIATION

*(CT:OBO-1; 04-29-2005)
(Uniform State/USAID/Commerce/Agriculture/DIA)*

- a. Renegotiation of a lease requires the execution of a new lease document. U.S. Government contracting principles prohibit the renegotiation of a valid lease document unless mandated by local law or unless additional benefit accrues to the U.S. Government. One example of such benefit is additional or improved space.
- b. Renegotiated leases are assigned new lease contract numbers but carry the same property identification numbers. The new lease should identify the former lease by number and state that it is replacing or superseding that contract.

15 FAM 344 NOTICE OF TERMINATION

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Termination of long-term leases (LTLs) and short-term lease (STL) functional properties requires prior approval of the Bureau of Overseas Buildings Operations (OBO) or, for USAID leases, the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS), and funding agency approval. All lease termination agreements should follow the sample in 15 FAM Exhibit 344.

15 FAM 345 LOCAL RENT CONTROLS

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

It is U.S. Government policy to invoke the protection of local rent control laws, since to do otherwise would raise the question of expending public funds in excess of the amount required. If payment of rent increases is required by local law, the post must investigate and retain copies of the appropriate laws or pertinent extracts therefrom and an original or certified copy of any pertinent ruling of a local rent control board or authority.

15 FAM 346 LOCAL REGISTRATION OF LEASES

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

In many countries lease terms are not enforceable by law unless the lease has been officially registered. Failure of posts to register leases can lead to loss of valuable contract rights. Despite the fact that the model lease requires landlords to register the lease, some landlords do not. In those cases, posts must register all leases unless the local jurisdiction does not provide a registration system or the system does not result in added protection to the rights of the U.S. Government. Registration is of utmost importance if the lease contains an option to purchase or a renewal option extending several years into the future. Registration fees should normally be paid by the lessor; however, if this is not feasible, these costs should be split or, as a last resort, should be charged to the lease fund.

15 FAM 347 THROUGH 349 UNASSIGNED

15 FAM EXHIBIT 341A LEASE AGREEMENT TEXT

(CT:OBO-1; 04-29-2005)

(State Only) Drafting a Lease

- a. For every lease signed by post on behalf of the Department of State, regardless of which agency will occupy the premises leased, posts should negotiate a lease that follows as closely as possible the content and format of the model lease. Posts should not arbitrarily edit the document to delete wordy phrases or add to the document without prior Bureau of Overseas Buildings Operations (OBO) approval. While it may sometimes appear that legal jargon has been substituted for straightforward sentences, there is nonetheless a legal purpose for each phrase as drafted. Posts should, however, select the appropriate pronouns for use throughout the lease and may, when local conditions demand it, make minor alterations to the model lease terms. Major or substantial changes may not be made without OBO approval.
- b. If, prior to use of this model lease, posts ask local legal counsel to review it for sufficiency under local law, OBO would appreciate having a copy of any comments provided to posts. Please send comments addressed for the Acquisitions and Disposals Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD).
- c. Once the lease has been negotiated, post should affix fiscal data to the lease, and ensure that both parties sign the final page and initial every page of the lease and its annexes.

ARTICLE ONE: Do not delete the phrase: “for itself, its heirs, executors, administrators, successors and assigns,” since doing so may mean that the lease ends when the landlord dies or when the leasing company ceases to do business.

NOTE: Posts may be able to use this language to argue for the continuation of the lease when a property that has been expropriated by the foreign government is returned to its private sector owner.

The full name and address of the Landlord shall be recorded in the first article of the lease. The lease shall be executed in the name of "The United States of America, acting by (name), (title), and (post)," for State and all other agency leases. **NOTE:** The reference in the former model lease to "The Secretary of State" has been deliberately omitted due to difficulties experienced in litigation.

If the lease is executed by a third party acting on behalf of the Landlord, two authenticated copies of the power of attorney or other evidence of authority to act on behalf of the Landlord shall be furnished with the lease.

ARTICLE TWO: It is important that the leased premises be described fully and completely. Provide the street address, building name, apartment number and the gross space leased. In the case of residential property, state the number and types of rooms, including servants' quarters and garage/parking space. For multiple unit leases, state the floor and unit number of each apartment. Include a description of all common areas if this is a shared building, and of the land areas associated with the building(s). In addition to the required inventory of furnishings and equipment, posts are well advised to photograph the premises prior to post occupancy and keep those photographs with the lease file.

Furnishings and/or equipment provided or included within the leased space should be noted in the lease. An inventory showing the condition of each item as "Good", "Fair" or "Poor" and indicating the nature of defects, if any, should be annexed to the lease. Furnishings and equipment included in this lease should not be removed from the property without written agreement between the Landlord and Tenant. Wherever possible, photographs documenting conditions upon lease commencement should be included in the inventory.

ARTICLE THREE: The basic term commences at the effective date of the lease and ends on the date agreed upon, unless otherwise terminated under the terms of the lease. The lease must be signed and dated by both parties.

ARTICLE FOUR: Where possible and in the U.S. Government's interest, provision should be made for options to renew the lease, such options to include a definite period and rental terms. If the Landlord will agree to the same rental for the renewal term(s), posts should use Option One set out in Article Four. If the Landlord will not agree to the same rental for the renewal term(s), posts should use Option Two set out in Article Four. All of Article Four should be deleted if the Landlord will not consider a lease extension or if post is certain its need for the leased premises will cease at the natural

termination of the particular lease.

If, under Option Two, the Landlord will not agree to a committee of valuers to establish fair market rental, posts may try the following fall back positions:

1. The new rental rate will be determined by mutual agreement between the parties;
2. The new rental rate will be a fixed percentage escalation over the current rate;
3. The new rental rate will be an escalated amount based on an economic Index published routinely in the country.

Posts are cautioned that rental rates which start low and are increased by an escalating factor at intervals throughout the lease may be more costly to the U.S. Government than a lease with a fixed, albeit high, rate at its commencement. Since currency exchange fluctuations, market fluctuations, and deteriorating building conditions will all affect renewal rate; since an index such as the Consumer Price Index normally is geared to "market basket" items and not to real estate; and since a thorough economic analysis is sometimes called for, posts should negotiate the best renewal terms possible and, where the annual lease payments exceed US\$25,000, posts should send a waiver request to OBO for review and approval before signing the lease.

ARTICLE FIVE: Posts are authorized to pay rent up to 12 months in advance. For longer advance payment terms, posts must cable OBO for approval. If payment is made in advance, posts should seek a discount from the overall rental since prepayment operates as a no-cost loan to the Landlord before the rental has actually accrued.

Lease contracts should normally be paid in local currency. To the extent possible, the lease contract should contain a provision that protects the U.S. Government from currency fluctuations by making it clear that no adjustment in lease payments will be made as a result of currency revaluations. In some instances, and where legally possible, it may be preferable to denominate the lease in U.S. dollars, payable in the equivalent local currency. Dollar or third-country currency payments are authorized only in those instances where such payments are necessary to the execution of the lease and are permissible under local law (see 15 FAM 324). Posts are reminded that offshore hard currency payments require specific prior Department approval. In addition, cash payments to offshore entities are prohibited. (See 92 State 331112.)

ARTICLE SEVEN: The itemization of the Landlord's maintenance responsibilities should not be viewed as services for which additional

costs are to be assessed, therefore occasioning a larger rental amount. Rather, they should be regarded as an itemization of services that the Tenant requires from the Landlord at no additional cost. In a multi-tenanted building, post may wish to require the Landlord to provide periodic window washing, upkeep for common areas, care of the grounds, etc.

The lease shall clearly specify the services to be furnished by the Landlord, such as heat, light, power, sewage disposal, janitorial and custodial services, elevator service, toilet facilities, air conditioning, etc., and the nature of and responsibility for condominium fees and services, if any. For office space, the lease shall also specify:

1. That the Landlord will provide to the U.S. Government access to the premises at all times and hours; and
2. That the Landlord is bound by the terms of the Vienna Convention and may not enter leased diplomatic or consular premises without prior U.S. Government permission.

Every effort should be made to include provisions which place the responsibility for initial make-ready improvements, renovations, alterations, repairs, and security upgrades consistent with the Department's A-32 standards (local guard program and residential security) with the Landlord and at the Landlord's expense. Particularly for residential properties, such preparations are considered a business expense, funded through normal rental payments, and should be maintained as landlord responsibilities. If the Landlord is unwilling to undertake such repairs and improvements, negotiations should focus on reduction in overall rental costs as an offset to the Tenant's (the U.S. Government) undertaking to make the necessary improvements. Such improvements are governed by regulations outlined in 15 FAM 313.1. If posts have difficulty negotiating such a provision, guidance should be sought from OBO.

Tenant responsibility should be limited to periodic cleaning of the premises, removing the trash, replacing light bulbs, and other minor maintenance and repair necessary to meet Tenant's obligation to maintain the premises in good repair and tenantable condition in accordance with Article Eight. Since the Landlord's major maintenance responsibilities have been delineated, it should not be necessary to itemize the Tenant's responsibilities in this regard.

In no case shall the Tenant accept responsibility for major structural repair and maintenance; this must be specified as the responsibility of the Landlord.

Taxes, assessments and other charges of a public nature shall be

borne by the Landlord. If prevailing circumstances require that the Tenant pay these charges directly or reimburse the Landlord separately, these costs shall in no case exceed the Landlord's actual costs.

ARTICLE EIGHT: All leases should provide that the Tenant has the right to make minor alterations, attach fixtures, etc. If the lease terms require prior written permission of the Landlord, it is necessary that such written permission be obtained prior to any undertaking. Posts should not raise the issue of restoration responsibilities with the Landlord. If the Landlord requires it, however, post may use the bracketed language (paragraph 2) of Article 8. At the termination of the lease, the Landlord and Tenant will rely on the condition report compiled at the time the Premises were leased and on the photographic file which post has developed to document the building's condition. It is at this juncture that the importance of post's documentation becomes evident. The parties should negotiate the estimated cost of restoration. The Tenant may agree to perform the required services, pay a contractor or the Landlord to perform them, pay the Landlord a one-time rental increase to cover the restoration costs, or pay the Landlord rent for an additional period in an amount equivalent to the restoration charges. The Tenant may also sell excess U.S. Government property that would be difficult to remove from the premises to the Landlord at its depreciated rate, using the purchase price as an offset to the costs of restoration. Post property control offices, leasing offices, and certifying offices must ensure that these types of transactions are fully justified and documented due to the obvious high risk of waste, loss, and abuse which can occur in such settlements. Posts should develop clear internal control procedures to prevent property and financial losses and the appearance of misappropriation.

For any alterations (including security upgrades) made to the property, post should request from the Landlord a waiver from any requirement to restore the property to its original condition.

ARTICLE NINE: This article is intended to give the U.S. Government some protection in the event the building post is leasing is transferred to a foreign government hostile to U.S. Government interests, to a Landlord with a criminal background inimical to U.S. Government interests.

An assignment is preferable to a sublease because it allows the U.S. Government to terminate its entire contractual involvement with the Landlord. Under an assignment, the U.S. Government as Tenant contractually disappears altogether and the assignee becomes the new Tenant, as if the U.S. Government had not existed. Under a

sublease, the U.S. Government still has a contractual relationship with the Landlord, even if the entire premises are sublet by the U.S. Government.

Posts should be aware that it may be difficult to get a Landlord to agree to an absolute and unrestricted right to assign or sublease. Accordingly, if a Landlord refuses to include such a provision, post should then attempt to negotiate both:

1. The right to assign or sublease at any time with the Landlord's consent, which consent shall not be unreasonably withheld, and
2. The right to assign or sublease at any time without consent where the Tenant, in its sole discretion, determines that, for essential security or foreign policy reasons, it can no longer occupy the premises.

An absolute right to assign or sublet is preferable; the right to assign or sublet with approval, in conjunction with the absolute right to assign or sublet without approval where U.S. Government security or foreign policy concerns make it necessary, is acceptable.

ARTICLE TEN: If insurance is not available at a post, posts must negotiate language exempting the Tenant from responsibility for repairing damages resulting from ordinary wear and tear, fire, earthquake, flood, storm, war, civil disturbance and other conditions beyond the Tenant's control, including intentional and/or negligent acts of the Landlord, Landlord's agents, servants, or employees.

ARTICLE ELEVEN: Posts should always ask for fee-simple absolute title or its local equivalent. (Posts should amend the language of the clause and send it to the Acquisitions and Disposals Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD) for approval if the title will not be fee simple absolute.) Regarding the purchase price option, the free market value price may be stated as a multiple of the rental amount (e.g., 10 times the rental amount). Posts are advised that an option to buy "at a mutually agreeable price to be determined" is not an option with any value. Although such language may be included, if it assists in negotiations, it should not be considered a true option; nor can it justify any concessions or monetary consideration from the leasing officer.

ARTICLE TWELVE: Note that this is not fashioned as a bilateral right for the Parties; rather it is intended as the right of the Tenant to repair and deduct the costs of repairs from the rent. If, however, post determines to terminate the lease under this clause, before doing so, post must notify OBO/REPM/AQD and Office of the Assistant

Legal Adviser for Buildings and Acquisitions (L/BA) of the circumstances surrounding its wish to do so. Once approval is given, post may then terminate the lease without prior notice to the Landlord.

ARTICLES SIX, THIRTEEN AND FOURTEEN: Negotiations for termination rights shall be based on obtaining the best possible terms for the U.S. Government, but in no case shall the lease provide for less than the standard diplomatic escape rights described in the model lease. Provision should be made, if possible, for termination or cancellation of the lease at the option of the Tenant. Leases executed within the framework of the delegation of authority contained in 15 FAM 312.6, and whose basic term exceeds one year, should include a clause which will provide a unilateral right for the Tenant to terminate the lease at any time upon written notice to the Landlord. On residential leases, posts should consider the advisability of adding the right to terminate the lease when the occupant for whom it was leased is transferred from the post.

When a lease specifies that rent shall be paid for more than three months in advance, the lease should contain a rebate clause as follows: "The Landlord further agrees to make a pro rata refund of any rent payments made for periods beyond the date the Tenant surrenders the premises in pursuance of any of the Tenant's termination rights as contained in this lease." For functional space where large advance payments are required, effort should be made to obtain a bank guarantee, surety bond, or the first lien on realty to assure a pro rata rebate in case the lease is terminated before its rent is earned. If a guarantee cannot be obtained, the reasons for its absence should be explained and retained in post's lease files.

Posts are required to negotiate a termination clause no less than that given as the fallback position. If posts are unable to do so, however, they should notify OBO of the circumstances surrounding negotiation of this clause immediately. OBO will work with post to fashion an acceptable alternative based on the Landlord's objections to the clause, e.g., increasing the period of notice. For the notice period of this clause, posts should determine the fewest days' notice acceptable to the Landlord. Post may wish to open with 30 days, to test the Landlord's flexibility in regard to this provision. If post and the Landlord cannot agree to thirty days, then agree to provide a longer notice period.

Please note carefully that this termination for convenience provision is not intended as a reciprocal provision. If OBO were to agree that the Landlord has this same right of termination, then the period of any lease signed might only be effective for the length of the notice

period, i.e., 90 days.

ARTICLE FIFTEEN: The Contract Disputes Act, set out in Article Fifteen, must, by law, be included in all U.S. Government leases, unless its use is waived for reasons set out below. Thus posts must attempt to negotiate the Contract Disputes Act language into all leases. If post has difficulty including this clause, please notify OBO/REPM/AQD immediately of the full circumstances involved in negotiating this particular clause. The clause may be waived in contracts with a foreign government or governmental agency, or with an international organization, at the discretion of the OBO Director/Chief Operating Officer, based upon justification presented. Post should keep OBO/REPM/AQD apprised of any problems encountered with negotiating this clause so that OBO can assist post in drafting appropriate documentation for signature by the OBO Director/Chief Operating Officer. In the event that this clause is not acceptable under local law, posts should obtain a full legal opinion from local legal counsel and submit that to OBO along with the request for a blanket waiver from use of this clause.

ARTICLE SIXTEEN: The purpose of this clause is to state which substantive law will be used in construing the terms of the lease. While it is typically the law of the country in which the property is located, there may be valid reasons for selecting the law of an alternative country.

ARTICLE SEVENTEEN: For any legal service of process, posts must immediately notify L/BA of the circumstances involved that occasioned the notice so that L/BA can instruct posts on appropriate procedures to be followed. Posts should also note that any formal legal service of process can only be submitted to the U.S. Government through the Ministry of Foreign Affairs.

If there are registered or certified mail or return receipt requested procedures available at post, posts should specify the type of mail service required. If there is no adequate mail service, posts may wish to specify hand delivery.

ARTICLE EIGHTEEN: Recent legislation requires that this “anti-lobbying” clause be included in all real estate contracts (other than Deeds) whose value exceeds \$100,000. Thus, even sales contracts and conditional (or promissory) sales agreements whose value exceeds \$100,000 must contain this clause. For leases, post should look only to the annual payments to determine the \$100,000 threshold. Thus, if the annual payment is greater than \$100,000, this clause must be included. Unlike the Contract Disputes Act clause (Article Fifteen), the law provides no exemptions to the use of this Article Eighteen language in real estate contracts. If post encounters

resistance to the inclusion of this clause, please notify the Acquisitions and Disposals Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD) immediately of the full circumstances and OBO will provide further explanation that post may pass on to the prospective landlord.

SIGNATURES: If local law and custom so suggest, posts may wish to have two witnesses sign the lease document.

15 FAM EXHIBIT 341B

SAMPLE OF STANDARD LEASE*

(*State only; USAID does not use this model lease.)

(CT:OBO-1; 04-29-2005)
(State Only)

Lease No.: _____

Fiscal Data: _____

LEASE AGREEMENT

between

and
THE UNITED STATES OF AMERICA

ARTICLE ONE: PARTIES

This lease (hereinafter the "Lease") is entered into this ____ day of _____, 20____, by [name and address of Lessor], for himself/herself/itself, his/her/its heirs, executors, administrators, successors and assigns, hereinafter referred to as "the LANDLORD", and the United States of America, acting by _____ of the Embassy/Consulate General/Consulate of the United States of America at _____, hereinafter referred to as "the TENANT."

ARTICLE TWO: DESCRIPTION OF PREMISES

The LANDLORD hereby leases to the TENANT the following described Premises (hereinafter the "Premises"), together with their appurtenances:

[Describe property]

to be used as a diplomatic establishment in _____ and for such other purposes as the TENANT may desire.

An inventory of any mechanical and electrical equipment on the premises, as well as condition reports of the premises, equipment, and furniture and furnishings provided by the LANDLORD, as they now exist, signed by both parties, is attached to and made part of this Lease.

ARTICLE THREE: LEASE TERM

The term of this lease shall be for _____ months/years, beginning _____, 20____, and ending _____, 20____.

ARTICLE FOUR: LEASE RENEWAL

OPTION ONE:

A. The Lease is renewable by the TENANT under these same terms and conditions for ____ further period(s) of ____ years, or until [date], provided that written notice is given to the LANDLORD at least ____ days prior to the date this Lease or any extension of it would otherwise expire.

OPTION TWO:

B. In the event the TENANT exercises its right to renew, the renewal rate shall be fair market rental, to be determined by the parties hereto. Within six months prior to the termination date of the present rental period, the LANDLORD shall give notice to the TENANT in writing of the proposed rental amount for the renewal period. Unless the TENANT objects to the proposed rent within twenty-one days of receipt of such notice, the rental change will take effect in the next rental term.

If the parties are unable to agree on fair market rental, there shall be a valuation committee of three valuers. One valuer (certified by the national Board of Appraisers, the Appraiser General, or the Land Valuation Department, depending upon what services are available locally) shall be appointed by each of the Parties within ten working days after written notice of renewal is given. The two named valuers shall appoint the third valuer. If the valuers are unable to agree to a third valuer within a period of one month after the appointment of the second valuer, the third valuer shall be appointed by the local governmental board having authority over appraisals. The fair market rental shall reflect the present value of this and similar rental properties for similar leased duration but shall disregard all improvements (if any) which TENANT has made to the Premises. The decision of the valuation committee shall be final and binding upon formal, written issuance thereof. There shall be no appeal of the decision of the valuation committee. Should fair market rental not be ascertained when the renewal period begins, the TENANT shall continue to pay rent at the applicable rate until the new rate has been set, at which time the TENANT will make retroactive payments to the date of commencement of the new Lease, if necessary.

ARTICLE FIVE: PAYMENT

The TENANT shall pay the LANDLORD for the premises rented and for other services provided at the following rate and terms:

[Insert amount. **NOTE:** If payment is to be made in other than U.S. dollars, insert specific information concerning the applicable exchange rate, e.g., what rate applies, is it subject to change, etc.]

All financial obligations of the TENANT resulting from this Lease are subject to the availability of funds appropriated annually by the Congress of the United States of America. Payments are to be made [monthly, quarterly, semi-annually, annually] in advance to the LANDLORD at [specify address within the host country. If otherwise, see Comments].

ARTICLE SIX: WARRANTIES

The LANDLORD warrants that he/she/it is the sole and lawful owner of the Premises and that he/she/it is duly authorized and able to enter into this Lease and perform its obligations. The LANDLORD also warrants that the TENANT shall and may peaceably enjoy possession of the Premises for the Lease term (and any extensions thereof), without any interruption or disturbance from the LANDLORD, or any other person claiming by, from, through, or under the LANDLORD. The LANDLORD further warrants that he/she/it will hold the TENANT free and harmless from any and all demands, claims, actions or proceedings by others in regard to the leased Premises.

The LANDLORD will handle and settle or otherwise dispose of all demands, claims, actions, or proceedings by others in respect of TENANT's right of quiet possession. In the event, however, that the TENANT incurs expenses in defense of its right to quiet possession, the LANDLORD agrees to reimburse the TENANT cost for cost as soon as practicable after the TENANT's presentation of its claim for such expenses, provided the TENANT has, before incurring such expenses, notified the LANDLORD in writing of the demand, claim, action or proceeding, and the LANDLORD has failed to take timely action to handle, settle or otherwise dispose of such demand, claim, action or proceeding.

The TENANT warrants that the person executing this Lease on its behalf has been appointed under the authority of the Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations (OBO DIR/COO), possessing all requisite power and authority to enter into this lease agreement on behalf of the United States Government.

ARTICLE SEVEN: LANDLORD RIGHTS AND RESPONSIBILITIES

A. Right of Entry. For the purpose of maintaining the Premises, the LANDLORD reserves the right to enter the Premises to inspect and make any necessary repairs, so long as such entry is at prearranged times, with the consent of the TENANT (which consent shall not be unreasonably withheld) and, at the TENANT's discretion, in the presence of a TENANT employee. The LANDLORD may not, however, gain access to sensitive or secured areas, as determined by the TENANT in its sole discretion.

B. LANDLORD-provided services. The LANDLORD shall furnish or otherwise provide to the TENANT during the Lease term the following: [Insert a full description of the services to be provided, e.g., heat, light, water, power, sewage disposal, janitorial and/or custodial services, elevator service, telephone service, and note who is responsible for payment of real property taxes.]

C. Maintenance Responsibilities. The LANDLORD shall, at his/her/its own cost and expense, be responsible for all major maintenance, structural work, and major repair including, but not limited to, maintenance and repair of structural elements and systems such as walls, ceilings, roofs, floors, foundations, heat, ventilating and air-conditioning, elevators, escalators, plumbing and related fixtures, LANDLORD-supplied generators, water filtration systems, and fire protection systems. The LANDLORD acknowledges that keeping the premises in good repair and tenantable condition is essential to make them appropriate for use by the United States of America.

[If applicable to a building shared with other tenants, add this language: Unless hereinafter specified to the contrary, the LANDLORD shall maintain the said premises, including any public halls, entrances to buildings, other common areas, elevators, fire systems and central electrical and mechanical systems, stairways, and public toilets, in good repair and tenantable condition.]

The LANDLORD will be responsible for any damages caused by the breakdown of these systems or any failure to maintain the common areas discussed above. The LANDLORD shall not be responsible for interruptions in utilities, beyond LANDLORD's control, supplied by municipal sources. The LANDLORD accepts full and sole responsibility for any claim arising in connection with damage or injury sustained through the use of public entrances, stairways, elevators, hallways and conveniences.

[If conditions warrant, use the following language: The LANDLORD undertakes to maintain the sidewalks before the entire building in proper and safe condition, and to accept all responsibility for them,

including but not limited to the removal of ice and snow, sand accumulation, storm debris, etc.]

D. Emergency Repairs. The LANDLORD agrees to commence, carry out, and complete emergency repairs within 48 hours after receiving oral or written notice from the TENANT. For repairs which cannot be completed within 48 hours, the LANDLORD agrees to present a completion schedule for acceptance by the TENANT. For any emergency repairs which the LANDLORD does not handle in this manner, the TENANT may undertake the repair at the LANDLORD's expense. Any funds expended by the TENANT in this regard shall be deemed prepaid rent and a subsequent rental payment shall be reduced by this amount. (If all rental payments have been made, the LANDLORD will make a direct refund to the TENANT.)

E. Taxes, Fees, and Assessments. The LANDLORD accepts full and sole responsibility for the payment of all fees, taxes and other charges of a public nature which are or may be assessed against the Premises. All expenses, if any, incurred in connection with the execution or registration of this Lease, including without limitation, notarial charges, registration charges, transaction taxes, stamp duties or other fiscal charges shall be paid by the LANDLORD.

F. Registration. If local law requires the LANDLORD to register this lease, he/she/it warrants that he/she/it will do so and, if so required by the TENANT in writing, he/she/it will provide the TENANT proof of registration within a reasonable time following the execution of this LEASE or extensions thereof.

G. Claims. The LANDLORD accepts full and sole responsibility for any claims arising from the TENANT or from third parties for damage or injury sustained when the LANDLORD has failed to maintain or repair the Premises as required by this Lease. The LANDLORD also accepts responsibility for damage or injury sustained by TENANT or third parties and resulting from the negligence and/or willful acts of the LANDLORD, LANDLORD's agents, and/or employees.

ARTICLE EIGHT: TENANT RIGHTS AND RESPONSIBILITIES

The TENANT shall have the right, during the existence of this Lease, to erect structures, additions and signs, to make alterations, and/or attach fixtures in or upon the Premises. This includes the right to affix a flagstaff, U.S. flag, U.S. seal, and office signs and insignia on the Premises leased. (Include only when necessary: provided that the alterations, additions, structures, or signs so placed shall not be detrimental to or inconsistent with the rights granted to other tenants). Such fixtures, additions or structures placed in or upon or attached to the said premises shall be and remain the property of the

TENANT and may be removed at the time of or within a reasonable time after the Lease or any extension thereof expires or is terminated.

[The following clause may be added only if required by the LANDLORD: The TENANT, if required by the LANDLORD, shall restore the Premises to the same condition as that existing at the time of entering upon the same under this Lease, except for reasonable and ordinary wear and tear, damage by the elements, or by circumstances over which the TENANT has no control. However, if the LANDLORD requires such restoration, the LANDLORD shall give written notice thereof to the TENANT 30 days before the termination of the lease.]

The TENANT shall, unless hereinafter specified to the contrary, maintain the said Premises in good repair and tenantable condition during the continuance of this Lease, except for reasonable and ordinary wear and tear, damage by the elements or circumstances over which the TENANT had no control. Any damage arising from the intentional acts or negligence of the LANDLORD, its agents or employees is similarly excepted.

ARTICLE NINE: ASSIGNMENT AND SUBLEASE

The TENANT may at any time assign its interest in the Premises or any portion thereof or sublet the Premises or any portion thereof to any party without the prior consent of the LANDLORD. If the LANDLORD assigns its rights and responsibilities under the Lease to a third party, the TENANT may, within 60 days of becoming aware of the identity of the third party, terminate the Lease.

If the LANDLORD sells the Premises, or defaults under any mortgage, trust deed or trust indenture related to the Premises, and if a purchaser or mortgagee duly enters into possession of the Premises, the LANDLORD shall give to the TENANT written notice of the identity of such third party prior to the sale, transfer or assignment. The TENANT agrees to become the tenant of the purchaser or mortgagee, unless the purchaser or mortgagee is a person or entity from whom TENANT may not lease under applicable laws of the United States or for essential security or foreign policy reasons. If the purchaser or mortgagee is unacceptable to the TENANT for any of the foregoing reasons, the TENANT may, within 60 days of the receipt of the LANDLORD's notice, terminate this Lease by giving at least 60 days' prior written notice of termination.

ARTICLE TEN: INSURANCE

The LANDLORD shall bear responsibility for all risk of loss of or damage to the Premises, for the entire term of this Lease, arising from any causes whatsoever with or without fault of the LANDLORD, including but not limited to fire; lightning; storm; tempest; explosion; riot; civil commotion; bursting or overflowing of water tanks, apparatus or pipes, boiler or machinery; flood; labor disturbance; earthquake; malicious damage or any other casualty or Act of God. The LANDLORD shall adequately insure the property against fire and all other risks enumerated above and normally insured under standard coverage; the LANDLORD shall also carry adequate personal injury and liability insurance on all areas of the property to cover all risks for which he/she/it is responsible. Each party, respectively, shall be liable for damages to the leased premises caused by its own fault or negligence, or that of its agents and/or employees. Evidence of the LANDLORD's insurance coverage shall be furnished to the TENANT within 45 days after the parties sign the Lease, and the TENANT reserves the right to ask in intervals thereafter for proof that the policy remains in force.

ARTICLE ELEVEN: PURCHASE OPTION

The LANDLORD hereby grants to the TENANT, in consideration of this Lease and the rental rates agreed to above, a firm option to purchase, in fee simple absolute and free of all encumbrances, the Premises covered by this Lease, including land, improvements and all appurtenances. The entire purchase price is [an amount equal to fair market value: state the amount, if known, or see Comments for further instructions].

This option to purchase shall continue open and in full force for the basic term as granted in this Lease and any extensions thereof. If and when the TENANT exercises the said option to purchase, the LANDLORD covenants and agrees to convey to the United States Government an unencumbered fee simple absolute title (complete and perpetual ownership) to the Premises covered by this Lease, including the land, improvements and all appurtenances, by deed with covenant of warranty and covenant against encumbrances.

ARTICLE TWELVE: LANDLORD's DEFAULT

In the event the LANDLORD fails to fulfill any of its obligations under this Lease, and where this Lease specifically provides no other remedy for such failure, the TENANT is entitled either to terminate this Lease, or, at its option, to take any measures which it deems necessary to establish the conditions contemplated by this agreement at the entire expense of the LANDLORD. The TENANT will notify the

LANDLORD in writing of its intention to take action in accordance with this Article prior to taking such action.

ARTICLE THIRTEEN: DESTRUCTION OF PREMISES

Whenever the Premises or any essential part thereof shall be destroyed or rendered unfit for further tenancy through fire, vandalism, earthquake, flood, storm, war, civil disturbance, or other similar casualty, this Lease shall, at the option of the TENANT, immediately terminate. In case of partial destruction or damage, this Lease may be terminated in whole or in part at the TENANT's option. Should the TENANT exercise its option, it shall provide at least twenty days' written notice to the LANDLORD, and no rent shall accrue to the LANDLORD after such termination.

If the Lease is terminated in whole or in part, the LANDLORD shall within 45 days of termination refund any advance rental payments in excess of rental liabilities accrued to the date of termination. Should the TENANT elect to remain in premises rendered partially untenable, a proportionate rebate or reduction of prevailing rental payments will be allowed and will be reflected in an amendment to this Lease to be signed within two months after the damage occurs.

ARTICLE FOURTEEN: TERMINATION

The TENANT may, for its convenience, terminate this Lease in whole or in part at any time, if it determines that such termination is in the best interests of the TENANT, by giving written notice to the LANDLORD [30, 60, or 90, etc.] days in advance. If the TENANT terminates this Lease in accordance with this clause, the TENANT shall not be liable for any charges additional to those normally incurred up to the date the Lease is terminated.

[If the Lessor will not accept the clause above, one which is normally required in U.S. Government contracts, post may negotiate a longer notice period; the following termination clause; or a termination clause which provides the U.S. Government no lesser rights than those provided by this clause.]

If the TENANT decides to remove its establishment from _____, or change the grade thereof, or acquires its own property in _____, or substantially reduces its personnel from the present level, (or if the employee assigned this housing is transferred), it shall be at liberty to terminate this Lease upon giving the LANDLORD 90 days' written notice without the LANDLORD having right to any payment other than rental to the date the TENANT removes its belongings and surrenders the Premises.

The LANDLORD further agrees to make a pro rata refund of any rent payments made for periods beyond the date the TENANT surrenders the Premises in pursuance of any of the TENANT's termination rights as contained in this Lease.

ARTICLE FIFTEEN: DISPUTES RESOLUTION

In the event that any disputes arise concerning the text of this Lease, the English version controls. Any disputes arising between the parties hereto concerning this Lease that cannot be resolved in negotiations between the LANDLORD and TENANT shall be settled in accordance with the dispute settlement provisions which follow:

1. Contract Disputes Act.

(A) This lease agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the "Act").

(B) Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this clause.

(C) "Claim," as used in this clause, means a written demand or written assertion by the LANDLORD or TENANT seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of the Lease terms, or other relief arising under or relating to this Lease. A "claim arising under the Lease," unlike a claim relating to the Lease, is a claim that can be resolved under an article of this Lease that provides for the relief sought by the claimant. However, a written demand or written assertion by the LANDLORD seeking the payment of money exceeding US\$100,000 is not a claim until certified as required by subparagraph (D)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon within a reasonable time.

(D)(1) A claim by the LANDLORD shall be made in writing and submitted within six years after accrual of the claim to the TENANT's General Services Officer or Management Officer for a written decision. A claim by the TENANT against the LANDLORD shall be subject to a written decision by the TENANT's General Services Officer or Management Officer.

(2)(i) The LANDLORD shall provide the certification specified in subparagraph (D)(2)(iii) of this clause when submitting any claim –

Exceeding US\$100,000; or

Regardless of the amount claimed, when using –
Arbitration conducted pursuant to 5 U.S.C. §§ 575-580; or
Any other alternative means of dispute resolution (“ADR”) technique that the TENANT elects to handle in accordance with the Administrative Dispute Resolution Act (“ADRA”).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which the LANDLORD believes the TENANT is liable; and that I am duly authorized to certify the claim on behalf of the LANDLORD.”

(3) The certification may be executed by any person duly authorized to bind the LANDLORD with respect to the claim.

(E) For LANDLORD claims of US\$100,000 or less, the TENANT’s General Services Officer or Management Officer must, if requested in writing by the LANDLORD, render a decision within 60 days of the request. For LANDLORD-certified claims over US\$100,000, the TENANT’s General Services Officer or Management Officer must, within 60 days, decide the claim or notify the LANDLORD of the date by which the decision will be made.

(F) The TENANT’s General Services Officer or Management Officer’s decision shall be final unless the LANDLORD appeals or files a suit as provided in the Act.

(G) If the claim by the LANDLORD is submitted to the TENANT’s General Services Officer or Management Officer or a claim by the TENANT is presented to the LANDLORD, the parties, by mutual consent, may agree to use ADR. If the LANDLORD refuses an offer for alternative disputes resolution, the LANDLORD shall inform the TENANT’s General Services Officer or Management Officer, in writing, of the LANDLORD’s specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. §§ 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (D)(2)(iii) of this clause, and executed in accordance with subparagraph (D)(3) of this clause.

(H) The TENANT shall pay interest on the amount found due and unpaid from:

- (1) The date the TENANT's General Services Officer or Management Officer receives the claim (certified if required); or
- (2) The date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the TENANT's General Services Officer or Management Officer initially receives the claim. Simple interest on claims shall be paid at the rate, as fixed by the U.S. Secretary of the Treasury as provided in the Act, which is applicable to the period during which the TENANT's General Services Officer or Management Officer receives the claim, and then at the rate applicable for each 6-month period as fixed by the U.S. Treasury Secretary during the pendency of the claim.

The LANDLORD shall proceed diligently with performance of this Lease, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Lease, and comply with any decision from the TENANT's General Services Officer or Management Officer.

If the LANDLORD is unwilling to accept Article 15 above, post may, with prior OBO/REPM and L/BA approval, use either of the following clauses:

Arbitration (#1).

In the event that any disputes arise concerning the text of this Lease, the English version controls. Any disputes arising between the parties hereto concerning this Lease which cannot be resolved in negotiations between the LANDLORD and TENANT shall be settled by arbitration, using the rules of the United Nations Commission on International Trade Law (UNCITRAL) in effect at that time, except that in the event of any conflict between those rules and the arbitration provisions of this Lease, the provisions of this Lease shall control and govern.

There shall be an arbitration committee of three arbitrators. One arbitrator shall be appointed by each of the Parties within ten working days after the complaining Party delivers to the other Party a formal, written complaint or charge specifying the nature of the complaint or charge and requesting arbitration. The two named arbitrators shall appoint the third arbitrator. If the arbitrators are unable to agree to a third arbitrator within a period of one month after the appointment of the second arbitrator, the third arbitrator shall be appointed by UNCITRAL in accordance with its procedural rules.

Taking into consideration the provisions of public international law, the arbitration committee shall apply the law of [country] to all questions of law. The decision of the arbitration committee shall be final and binding upon formal, written issuance thereof. There shall be no appeal of the decision of the arbitration committee.

Arbitration (#2).

In the event that any disputes arise concerning the text of this Lease, the English version controls. Any disputes arising between the parties hereto concerning this Lease which cannot be resolved in negotiations between the LANDLORD and TENANT shall be settled by arbitration. One arbitrator shall be appointed by each of the Parties within ten working days after the complaining Party delivers to the other Party a formal, written charge specifying the nature of the complaint and requesting arbitration. The two named arbitrators shall appoint the third arbitrator no later than one month after their appointment, and shall reach agreement on the dispute no later than three months after they have been convened. The decision of the arbitration committee shall be final and binding once it has been issued in writing. There shall be no appeal of the decision of the arbitration committee.

ARTICLE SIXTEEN: CHOICE OF LAW

The terms of this Lease shall be construed in accordance with the local laws governing the situs of the premises leased hereunder.

ARTICLE SEVENTEEN: SCOPE OF AGREEMENT/LEGAL CONSTRUCTION

This Lease cancels all other agreements which the parties may have previously entered into which relate in any way to the Premises, and this written agreement constitutes the entire understanding of the parties. Oral discussions and representations made during negotiation of this Lease shall not be construed to be terms of this Lease. Any changes, variations or modifications of the terms of this Lease shall not be valid unless made in writing and signed by both parties hereto. For the purposes of this Paragraph, only the signature of the General Services Officer or the Management Officer at the (U.S. Embassy) in _____ shall be deemed valid and binding as against the TENANT. Neither failure of either Party to insist upon strict performance of any agreement, term, covenant, or condition hereof, nor failure of either Party to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any breach or a waiver of such agreement, term, covenant or condition in the future. An invalidation of one of the clauses of this lease agreement shall not be grounds for invalidation of any other clauses.

ARTICLE EIGHTEEN: NOTICES

All notices under this Lease agreement, other than legal service of process, shall be delivered to the persons at the addresses set forth below:

For the LANDLORD:

Address

For the TENANT:

(Title, i.e., General
Services Officer or
Management Officer)
U.S. Embassy/
Consulate General/
Consulate Address

Legal service of process upon the TENANT shall be made through the Ministry of Foreign Affairs in accordance with customary international law.

ARTICLE NINETEEN: CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

[required only if the annual rental amount of the lease exceeds \$100,000]

(A) The LANDLORD, by signing this Lease, hereby certifies to the best of his/her/its knowledge and belief that on or after December 23, 1989:

(1) No appropriated funds of the United States Government have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a Member of the United States Congress on the LANDLORD's behalf, in connection with the award of any U.S. Government contract (including this Lease), the making of any United States Government loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any such contract, grant, loan, or cooperative agreement.

(2) If any funds other than United States Government appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a Member of the United States Congress, on the LANDLORD's behalf in connection

with this Lease, the LANDLORD shall complete and submit to the contracting officer, prior to the execution of this Lease, OMB Standard Form LLL, Disclosure of Lobbying Activities.

(3) The LANDLORD will include the language of this certification in any contract awarded by LANDLORD to fulfill LANDLORD's obligations under this Lease that exceeds \$100,000, and will require that all recipients of such contract awards shall certify and disclose accordingly.

(B) Submission of this certification and disclosure is a prerequisite for making and entering into this Lease imposed by Section 1532, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure. IN WITNESS WHEREOF, the parties have affixed their signatures this ____ day of _____, 20__.

LANDLORD:

[Typed Name]

TENANT:

United States of America

By _____
[Typed Name]

By _____
[Typed Name]
(Title, i.e., General Services Officer
or Management Officer) at U.S.
Embassy/Consulate General/Consulate

15 FAM EXHIBIT 342 LEASE AMENDMENT

(CT:OBO-1; 04-29-2005)

(Amend, as appropriate, for use with USAID leases.)

Amendment No. _____ to
Lease No. _____
Date _____
Post _____
PropID _____

(1) Reference is made to Lease Number _____ entered
into on [Date], [Year] between [Name of Lessor],
Lessor, and the United States of America, acting by [Name and
Title of Officer], Lessee, for [Type of Space]
at [Address],
and amendments to such lease if any.

(2) In consideration of the Lessor providing _____ square feet of additional space, the Lessee hereby agrees to pay additional rent in the amount of _____ (quarterly, annually) commencing on [Date] , [Year] .

(or)

The Lessor hereby grants permission to the Lessee to install (air-conditioning, grill bars, shelving, kitchen sink, sanitary facilities, etc.) in the above-mentioned premises, such installations to remain the property of the Lessee, subject to removal upon termination of the said lease without obligation to restore the premises to original condition.

(or)

Article _____ of said lease is hereby amended to provide for maintenance of the premises by the Lessee for which the rent shall be reduced to _____ annually, effective [Date] , [Year] .

(or)

Whereas, Article _____ of said lease now reads
 "_____, " it
 is deemed in the best interest of both parties that it be changed to read
 "_____ " as
 of the date of signing this agreement.

(3) Therefore, it is agreed by and between the Lessor and the Lessee that the referenced lease is hereby amended as indicated in (2) above, all other provisions of the said lease remaining the same and unchanged.

In witness thereof, the parties have hereunto subscribed their names this ____ day of [Month] , [Year] .

The United States of America, Acting By:

 [Name and Title] LESSEE

 [Name, Title, and Address] LESSOR

15 FAM EXHIBIT 344 TERMINATION AND ACQUITTANCE AGREEMENT

(CT:OBO-1; 04-29-2005)

Date _____
Post _____
Lease No. _____
PropID _____

(1) Reference is hereby made to lease number _____ dated [Date], [Year] and amendments, between [Name of Lessor] as Lessor and the United States of America as Lessee, providing for the lease of the following described premises:

[Brief description of premises with street address]

(2) The lease on the above premises is considered cancelled and terminated effective [Date], and the Lessor hereby acknowledges that the premises (and furnishings) were returned by the Lessee to the Lessor on [Date], in a condition acceptable to the Lessor, free of any and all claims against the United States Government or any agency, agent or employee thereof.

(3) In witness thereof both the parties have hereunto signed as of the date given below:

DATED AT [Post] this ____ day of [Month], [Year].

The United States of America, Acting By:

_____[Name and Title]_____[Name and Title] LESSEE

_____[Name, Title, and Address]_____[Name, Title, and Address] LESSOR